

Message Text

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SUBJECT: SENATOR EAGLETON'S SPEECH ON TREATY WITH SPAIN

FOLLOWING IS ADVANCE TEXT OF SPEECH SCHEDULED FOR DELIVERY
FEBRUARY 5 BY SENATOR THOMAS F. EAGLETON, (D-MO):

"MR. PRESIDENT, OUR RELATIONSHIP WITH SPAIN GREW OUT OF THE
COLD WAR ERA. THE GOVERNMENT OF FRANCISCO FRANCO -- THE
SURVIVING AXIS LEADER -- DID NOT BEGIN TO MEASURE UP TO
THE AMERICAN IDEAL. BUT, IN A SHARPLY POLARIZED WORLD,
SPAIN'S ANTI-COMMUNISM AND STRATEGIC LOCATION SEEMED TO
OUTWEIGH DEMOCRATIC PRINCIPLES.

OUR DECISION TO LEGITIMIZE THE FRANCO REGIME DID LITTLE TO
ENHANCE THE PRESTIGE OF THE UNITED STATES. WE HAD ABSOLUTE
POWER WITHIN THE WESTERN WORLD THEN, AND WE EXERCISED IT
FOR WHAT WE PERCEIVED TO BE THE GENERAL GOOD. BUT
REVISIONIST THINKING -- THE RENDERING OF HISTORICAL JUDG-
MENTS WITH THE BENEFIT OF HINDSIGHT -- IS NOT AN EXCLUS-
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IVELY AMERICAN PHENOMENON. THERE ARE MANY IN BOTH EUROPE
AND THE UNITED STATES TODAY WHO HOLD OUR GOVERNMENT RES-
PONSIBLE FOR FRANCO'S LONG AND STULTIFYING REIGN.

TODAY THE UNITED STATES SENATE HAS BEEN ASKED, FOR THE
FIRST TIME TO RATIFY THE AGREEMENT WHICH FORMS THE BASIS

FOR OUR CONTEMPORARY RELATIONSHIP WITH SPAIN. OUR BASES
AGREEMENT WITH THAT COUNTRY, EXPANDED SINCE 1970 TO AN
AGREEMENT OF "FRIENDSHIP AND COOPERATION" COVERING A
VARIETY OF BILATERAL UNDERTAKINGS, HAS NOW BEEN SUBMITTED
TO THIS BODY AS A TREATY.

MR. PRESIDENT, THE SENATE MUST LOOK CAREFULLY AT THE
SUBSTANCE OF THIS TREATY -- WE MUST CONSIDER THE POLICY
IMPLICATIONS OF EACH OF ITS PROVISIONS. BUT WE CANNOT
OVERLOOK THE SIGNIFICANCE OF THE ADMINISTRATION'S
REQUEST FOR THE ADVICE AND CONSENT OF THE SENATE.

SOME WILL CALL THE PRESIDENT'S ACTION AN IMPORTANT
PRECEDENT -- A CONTEMPORARY EXAMPLE OF PRESIDENTIAL
ACQUIESCENCE TO CONGRESSIONAL POWER IN FOREIGN AFFAIRS.
SUCH A VIEW, WHILE PROBABLY CORRECT IN THE POLITICAL
SENSE, NONETHELESS SEEMS TO ADVANCE AN ERRONEOUS
CONSTITUTIONAL ASSUMPTION -- AN ASSUMPTION THAT A
PRESIDENT, ANY PRESIDENT, HAS THE DISCRETION TO CHOOSE
WHETHER OR NOT TO SUBMIT AN AGREEMENT OF THIS TYPE AS A
TREATY.

I WANT TO COMMEND THOSE WITHIN THE EXECUTIVE BRANCH WHO
SUCCESSFULLY ARGUED FOR SUBMISSION OF THIS AGREEMENT AS A
TREATY. AT A TIME WHEN SELF-SERVING CONSTITUTIONAL
INTERPRETATIONS THRETEW THE VERY ESSENCE OF OUR SYSTEM,
THOSE WHO FOUGHT AGAINST UNTRAMMELLED PRESIDENTIAL POWER
TO COMMIT THE UNITED STATES BY EXECUTIVE AGREEMENT MAY
HAVE PLACED THEIR FINGER IN THE DIKE AT A CRUCIAL MOMENT.

THE OCCASION OF THE SUBMISSION OF THIS IMPORTANT AGREEMENT
TO THE SENATE SHOULD BE USED TO COME TO GRIPS WITH THE
CONSTITUTIONAL ISSUE -- THE CLAIM OF ABSOLUTE PRESIDENTIAL
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DISCRETION TO CHOOSE THE FORM AN INTERNATIONAL AGREEMENT
WILL TAKE. IN MY VIEW, THIS CLAIM SERIOUSLY DISTORTS THE
CONSTITUTIONAL DESIGN.

THE EXECUTIVE BRANCH'S POSITION ON THESE MATTERS WAS
MOST EXPLICITLY CONTAINED IN A MEMORANDUM SUBMITTED TO
THE SENATE FOREIGN RELATIONS COMMITTEE BY THE STATE
DEPARTMENT LEGAL ADVISOR, MONROE LEIGH, AT THE TIME OF THE
CONSIDERATION OF THE SINAI AGREEMENT. "THE PRESIDENT,"
MR. LEIGH, STATED, "HAS THE DISCRETION TO CHOOSE WHETHER
TO CONCLUDE ANY PARTICULAR AGREEMENT AS A TREATY OR AS AN
EXECUTIVE AGREEMENT."

BUT THE CONSTITUTION -- WHICH, MR. LEIGH ARGUES, OFFERS NO GUIDANCE IN THESE MATTERS -- PROVIDES THAT THE PRESIDENT "SHALL HAVE POWER, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, TO MAKE TREATIES..." HOWEVER, MR. LEIGH CITES AN ADDITIONAL POWER -- AN INHERENT POWER UNDER THE PRESIDENT'S EXECUTIVE AUTHORITY -- OF APPARENTLY ABSOLUTE DISCRETION TO COMMIT THE UNITED STATES BY EXECUTIVE AGREEMENT. IF THIS "INHERENT" POWER EXISTS, THEN WE MUST ASSUME THAT THE EXPLICITLY WORDED POWER OF THE SENATE TO OFFER ITS ADVICE AND CONSENT ON TREATIES CAN BE RENDERED COMPLETELY VOID BY PRESIDENTIAL FIAT.

WHILE THE FOUNDING FATHERS DID LEAVE SOME PROVISIONS OF THE CONSTITUTION PURPOSELY VAGUE, THEY MOST CERTAINLY DID NOT INTEND THAT PROVISIONS DESCRIBING THE DELEGATION OF POWER IN VERY EXPLICIT TERMS WERE TO BE SUPERCEDED BY MORE GENERAL PROVISIONS. TO OFFER SUCH A CONSTRUCTION OF THE CONSTITUTION IS, IN THE WORDS OF ALEXANDER BICKEL, "IN THE MOST FUNDAMENTAL SENSE TO DENY THE IDEA OF LAW ITSELF."

THE ONLY EXECUTIVE AGREEMENTS PERMISSIBLE UNDER OUR CONSTITUTION ARE THOSE ENTERED INTO EITHER PURSUANT TO A STATUTE OR TO IMPLEMENT A PROVISION OF A TREATY. THE PRESIDENT'S POWER TO ENTER INTO AN AGREEMENT OF THIS FORM NATURALLY FLOWS FROM THE CONGRESS, NOT FROM A MYTHICAL "INHERENT" POWER.

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THE SUBMISSION OF THIS TREATY MUST LEAD TO A MORE ORDERLY PROCEDURE FOR ASSURING THAT THE ADVICE AND CONSENT OF THE SENATE IS APPLIED TO ALL IMPORTANT INTERNATIONAL AGREEMENTS. IF NECESSARY, GUIDELINES SHOULD BE SET BY LAW. HOWEVER, EVEN IN THE ABSENCE OF A STATUTE, THE SENATE MUST INSIST ON ITS CONSTITUTIONAL PREROGATIVES.

MR. PRESIDENT, THE SENATE, IN ITS CONSIDERATION OF THIS TREATY, SHOULD NOT BE INFLUENCED IN ANY WAY BY THE EXECUTIVE BRANCH'S CHANGE OF MOOD WITH RESPECT TO THE POWER OF ADVICE AND CONSENT. IF THIS AGREEMENT, AS MERIT, IT SHOULD BE RATIFIED. IF IT DOES NOT, WE SHOULD REJECT IT, OR RECOMMEND IT BE MODIFIED.

WE DO HAVE AN OBLIGATION, HOWEVER, TO PROCEED TO CONSIDER THIS IMPORTANT MATTER WITH ALL DELIBERATE SPEED. IT HAS BEEN SUGGESTED THAT THE SENATE MIGHT CONSIDER DELAYING ITS ACTION ON THIS TREATY IN ORDER TO SEE MORE CLEARLY THE SHAPE OF SPAIN'S FUTURE. I UNDERSTAND THE CONCERN OF

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THOSE WHO ADVOCATE SUCH A COURSE. WITH THE DEATH

OF FRANCO THE SPANISH POLITICAL SCENE HAS TAKEN ON A DISTINCTLY TENTATIVE CAST.

BUT WE MUST ALSO CONSIDER THE VERY REAL POSSIBILITY THAT OUR FAILURE TO ACT ON THIS TREATY COULD, IN ITSELF, IMPACT NEGATIVELY ON FUTURE EVENTS IN SPAIN. SO LONG AS THE SENATE REMAINS UNABLE TO PREDICT THE FAILURE ACCURATELY, THE ONLY RESPONSIBLE COURSE WILL BE TO FULFILL OUR CONSTITUTIONAL ROLE BY CONSIDERING ALL AVAILABLE INFORMATION AND VOTING EITHER TO RATIFY, RATIFY WITH RESERVATIONS OR REJECT.

HAVING RECOMMENDED THAT WE PROCEED DESPITE THE CHANGE GOING ON IN SPAIN TODAY, I WOULD ALSO POINT OUT THAT THAT VERY CHANGE IS THE MOST IMPORTANT FACTOR OF WHICH WE MUST TAKE ACCOUNT. THAT THERE WILL BE A DIFFERENT POLITICAL SYSTEM AND NEW LEADERSHIP IN SPAIN DURING THE FIVE-YEAR LIFETIME OF THIS AGREEMENT SEEMS INEVITABLE.

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HOW THEN ARE U.S. INTERESTS BEST SERVED. . . BY RATIFICATION OR REJECTION OF THIS TREATY? HOW WILL FUTURE SPANISH LEADERS INTERPRET THE CONTINUATION OF OUR RELATIONSHIP AT THIS IMPORTANT JUNCTURE IN THE POST-FRANCO ERA? WILL THE NEW SPAIN FEEL THAT THE UNITED STATES GOVERNMENT PLACED SECURITY CONSIDERATIONS OVER PRINCIPLE, AS WE DID WHEN WE FIRST PROVIDED FRANCO'S GOVERNMENT WITH AN IMPORTANT MEASURE OF LEGITIMACY?

BEFORE ATTEMPTING TO ANSWER THESE ALL-IMPORTANT QUESTIONS WE SHOULD EXAMINE THE ALTERNATIVE TO THE AGREEMENT WE NOW CONSIDER. WE MUST ASK OURSELVES WHETHER WE COULD HAVE REFLECTED THE TENTATIVE STATE OF THE CURRENT SPANISH POLITICAL SCENE WITH AN EQUALLY TENTATIVE AGREEMENT? COULD WE HAVE SIMPLY EXTENDED THE OLD AGREEMENT ON A RENEWABLE-ANNUALLY BASIS, FOR EXAMPLE?

EVEN IF OUR NEGOTIATORS SAW THIS AS A VIABLE APPROACH, WHICH THEY OBVIOUSLY DID NOT, IT IS CLEAR THAT THE SPANISH GOVERNMENT WOULD HAVE NONE OF IT. THE PREVIOUS AGREEMENTS WITH SPAIN WERE FIVE-YEAR PACTS. FOR A SPANISH GOVERNMENT TO AGREE TO LESS IN THE WANING DAYS OF FRANCO'S LIFE WOULD HAVE BEEN TO CONCEDE ITS TRANSITORY STATUS. THE NEW GOVERNMENT WAS EVEN LESS LIKELY TO TOLERATE A TEMPORARY ARRANGEMENT.

IT CAME DOWN, THEREFORE, TO A VERY CLEARCUT DECISION: SHOULD WE MAINTAIN THE RELATIONSHIP OR NOT? IT IS MY VIEW THAT WE CAN DO MORE TO ADVANCE U.S. INTERESTS AND THE INTERESTS OF A DEMOCRATIC SPAIN BY CONTINUING THE RELATIONSHIP.

THE UNITED STATES FOR OVER TWENTY YEARS HAS BEEN SPAIN'S MOST IMPORTANT LINK TO THE DEMOCRACIES OF WESTERN EUROPE. FOR MOST OF THIS TIME FRANCO'S SPAIN LOOKED INWARD, LARGELY UNAFFECTED BY THE SWEEPING ECONOMIC AND POLITICAL CHANGES ON THE CONTINENT. BUT IN THE SIXTIES, AIDED BY THE UNITED STATES, SPAIN EMERGED AS AN INDUSTRIAL NATION -- A NATION WHICH NOW NEEDS A NEW KIND OF ECONOMIC AND POLITICAL LEGITIMACY TO SUSTAIN ITSELF.

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SO LONG AS SPAIN SEEKS ACCEPTABILITY -- WHETHER TO JOIN THE COMMON MARKET OR NATO -- THE UNITED STATES WILL BE ABLE TO EXERT POSITIVE INFLUENCE OVER THE PROCESS OF CHANGE. TO PRECIPITOUSLY SEVER OUR SPECIAL TIE WOULD MEAN PLAYING DIRECTLY INTO THE HANDS OF FRANCO'S ADHERENTS -- ADHERENTS WHOSE CHAUVINISM HAS ALWAYS BEEN MOST EFFECTIVE WHEN SPAIN HAS SEEMED ISOLATED.

MR. PRESIDENT, I HAVE OUTLINED A RATIONALE FOR MAINTAINING OUR RELATIONSHIP WITH SPAIN, BUT I HAVE NOT COMMENTED ON THE SPECIFIC PROVISIONS OF THE TREATY BEFORE US. I WILL, OF COURSE, AWAIT THE RECOMMENDATIONS OF THE FOREIGN RELATIONS COMMITTEE BUT I WOULD LIKE TO COMMENT ON SOME OF THE TREATY'S PROVISIONS IN A GENERAL WAY.

FIRST, ALTHOUGH WITH SOME RESERVATIONS I ACKNOWLEDGE THE IMPORTANCE OF OUR MILITARY BASES IN SPAIN, I FEEL THIS MUST REMAIN A SECONDARY CONSIDERATION. IF THINGS GO WRONG, WE COULD LOSE THOSE BASES IN A YEAR.

AS I HAVE EXPLAINED, IT IS MY FEELING THAT IF THIS TREATY IS WORTHY OF SUPPORT, IT MUST HAVE A POSITIVE IMPACT ON SPAIN'S POLITICAL EVOLUTION. IF THIS TREATY IS SEEN BY THE FUTURE LEADERS OF SPAIN AS AN EFFORT TO PERPETUATE THE OLD REGIME, THEN U.S. INTERESTS, SECURITY OR OTHERWISE, WILL SUFFER IN THE LONG RUN.

IN THIS REGARD, THE OPPOSITION MOVEMENT MUST BE MADE TO UNDERSTAND THAT THIS TREATY DOES NOT REPRESENT AN ENDORSEMENT OF THE EXISTING FORM OF GOVERNMENT. SECRETARY KISSINGER HAS ALREADY HELPED THAT PERCEPTION ALONG BY EXPRESSING SUPPORT FOR SPAIN'S POLITICAL EVOLUTION AND THE EFFORTS TO "LINK SPAIN TO THE HUMAN AND POLITICAL VALUES ON WHICH THE WEST RELIES."

THE SENATE MIGHT AID THE PERCEPTION EVEN FURTHER BY ADDING AN "UNDERSTANDING" THAT OUR GOVERNMENT HOPES THAT

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THE CONTINUING RELATIONSHIP BETWEEN OUR COUNTRIES WILL
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ADVANCE THE PRINCIPLES OF DEMOCRACY.

THE VALUE OF THE TREATY FORM IS THE FLEXIBILITY GAINED
BY THE ADVICE AND CONSENT PROCESS. IN AREAS WHERE THE
REQUIREMENTS OF DIPLOMACY RESTRICT THE EXECUTIVE BRANCH,
THE SENATE CAN SEND A DISTINCT MESSAGE ON A PEOPLE-TO-
PEOPLE BASIS. WE SHOULD NOT FOREGO THIS OPPORTUNITY AS
WE CONSIDER THE POLITICAL IMPACT OF RENEWING OUR FORMAL
RELATIONSHIP WITH A CHANGING SPAIN.

WE MUST ALSO CAREFULLY CONSIDER THE NATURE OF THE
DEFENSE AGREEMENT WE WILL NOW HAVE WITH SPAIN. IS THE
UNITED STATES LEGALLY COMMITTED TO DEFEND SPAIN?

ARTICLE V OF THE TREATY CONTAINS NO SUCH COMMITMENT.
IT DOES NOT CONTAIN LANGUAGE COMMON TO MUTUAL DEFENSE
TREATIES CALLING FOR CONSULTATION WITH A VIEW TO AIDING
THE ATTACKED PARTY IN ACCORDANCE WITH THE "CONSTITUTIONAL
PROCESSES" OF THE SIGNATORY NATIONS. SUCH LANGUAGE, IT
SHOULD BE NOTED, WAS CONTAINED IN THE MAIN BODY OF THE
PREVIOUS AGREEMENT.

UNDER SUPPLEMENTARY AGREEMENT NUMBER 6, HOWEVER, THERE
IS A COMMITMENT TO CONSULT ON A CONTINGENCY BASIS. IT IS
SO CONDITIONED, HOWEVER, AS TO BE APPLICABLE ONLY UNDER
THE REMOTEST WORST-CASE CIRCUMSTANCE -- AN ALL-OUT EAST-
WEST CONFLICT. ARTICLE III OF THAT SECTION READS IN PART:

' IN THE CASE OF EXTERNAL THREAT OR ATTACK AGAINST THE
SECURITY OF THE WEST, THE TIME AND MANNER OF THE USE BY
THE UNITED STATES OF THE FACILITIES REFERRED TO IN THIS
SUPPLEMENTARY AGREEMENT TO MEET SUCH THREAT OR ATTACK WILL
BE THE SUBJECT OF URGENT CONSULTATIONS BETWEEN THE TWO
GOVERNMENTS, AND WILL BE RESOLVED BY MUTUAL AGREEMENT IN
LIGHT OF THE SITUATION CREATED.

UNDER THE WAR POWERS RESOLUTION, EVEN THIS UNLIKELY
COMMITMENT CANNOT BE CONSTRUED AS AUTHORIZING THE
PRESIDENT TO CONDUCT WAR WITHOUT CONGRESSIONAL CONSENT.
SECTION 8 OF THAT LAW STATES IN PART THAT AUTHORITY TO
INTRODUCE U.S. FORCES INTO HOSTILITIES CANNOT BE
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INFERRED "FROM ANY TREATY HERETOFORE OR HEREAFTER
RATIFIED UNLESS SUCH TREATY IS IMPLEMENTED BY
LEGISLATION SPECIFICALLY AUTHORIZING THE INTRODUCTION OF
U.S. ARMED FORCES INTO (SUCH) HOSTILITIES. . . ."

MR. PRESIDENT, I WILL CONCLUDE MY REMARKS TODAY BY

COMMENTING BRIEFLY ON THE REFORM PROPOSALS ANNOUNCED LAST WEEK BY THE SPANISH GOVERNMENT. OBVIOUSLY, THESE RECENT DEVELOPMENTS HAVE A MATERIAL IMPACT ON OUR DELIBERATIONS.

IT IS CLEAR THAT THESE PROPOSALS AND, JUST AS IMPORTANTLY, THE RHETORIC CHOSEN BY PRIME MINISTER ARIAS TO INTRODUCE THEM, ARE FAR SHORT OF WHAT IS REQUIRED. BUT I THINK IT IS TIME TO BE REALISTIC -- THEY WERE ALSO FAR MORE THAN WAS EXPECTED. IT MUST HAVE TAKEN CONSIDERABLE ARM TWISTING TO GET EVEN THIS LIMITED PROGRAM APPROVED BY THE CONSERVATIVE COUNCIL OF THE REALM, THE INSTITUTION WHICH MUST APPROVE CHANGES IN SPANISH LAW. THE ORDINARY CITIZEN YEARNING FOR LIBERTY WILL TAKE LITTLE SOLACE IN THIS HALFWAY MEASURE, BUT THE DIRECTION IN WHICH SPAIN IS HEADING SEEMS UNMISTAKABLE.

MR. PRESIDENT, THERE IS A POPULAR ATTITUDE IN THESE UNSETTLED TIMES THAT HOLDS THAT FREEDOM CAN COME IN A POLITICALLY OPPRESSED COUNTRY ONLY BY REVOLUTION. THE SPANISH PEOPLE, HAVING GAINED A MEASURE OF COMFORT AND STABILITY AS A RESULT OF THEIR NATION'S ECONOMIC UPSURGE, CANNOT LOOK FAVORABLY UPON THOSE WHO WANT TO CREATE A NEW SPAIN OUT OF THE ASHES OF TODAY'S SOCIETY. AND WE WOULD BE WRONG TO ENCOURAGE THOSE WHO ADVOCATE SUCH A DESTRUCTIVE COURSE.

I BELIEVE THAT THERE IS A POLITICAL EVOLUTION GOING ON IN SPAIN TODAY WHICH WILL LEAD INEXORABLY TO DEMOCRACY. IT MAY START SLOWLY, BUT THOSE WHO ACQUIRE A MEASURE OF FREEDOM AFTER A GENERATION OF REPRESSION WILL MOVE QUICKLY TO CONSOLIDATE THEIR GAINS. AND THOSE IN THE SPANISH GOVERNMENT WHO NOW FEEL THAT THEY CAN OPEN THE DOOR ONLY HALFWAY WILL SOON LEARN WHENCE THEIR POWER DEVOLVES. IT WILL NOT DESCEND FROM THE KING, BUT RATHER UNCLASSIFIED

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IT WILL ASCEND FROM THE PEOPLE.

WE MUST HOPE THAT THE TREATY OF FRIENDSHIP AND COOPERATION BETWEEN THE UNITED STATES AND SPAIN BECOMES AN INSTRUMENT TO FACILITATE RATHER THAN IMPEDE THE MOVE TOWARD DEMOCRACY. NO ONE CAN BE COMPLETELY SURE IT WILL HAVE THAT EFFECT, BUT IT IS MY JUDGMENT THAT THE ABSENCE OF ANY RELATIONSHIP WITH SPAIN AT THIS TIME WOULD DO THE CAUSE OF DEMOCRACY MUCH MORE HARM THAN GOOD." INGERSOLL

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